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R E M A R K S

ON THE

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[PRICE ONE SHILLING AND SIXPENCE.]

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R E M A R K S

ON THE

RIOT ACT,

WITH

AN APPLICATION

TO CERTAIN RECENT AND ALARMING FACTS.

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Malo periculosam libertatem quam quietum servitium.

PALATINE OF POSNANIA.

PRINTED FOR G. KEARSLY, LUDGATE-STREET.

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Recd. June, 21, 1899.

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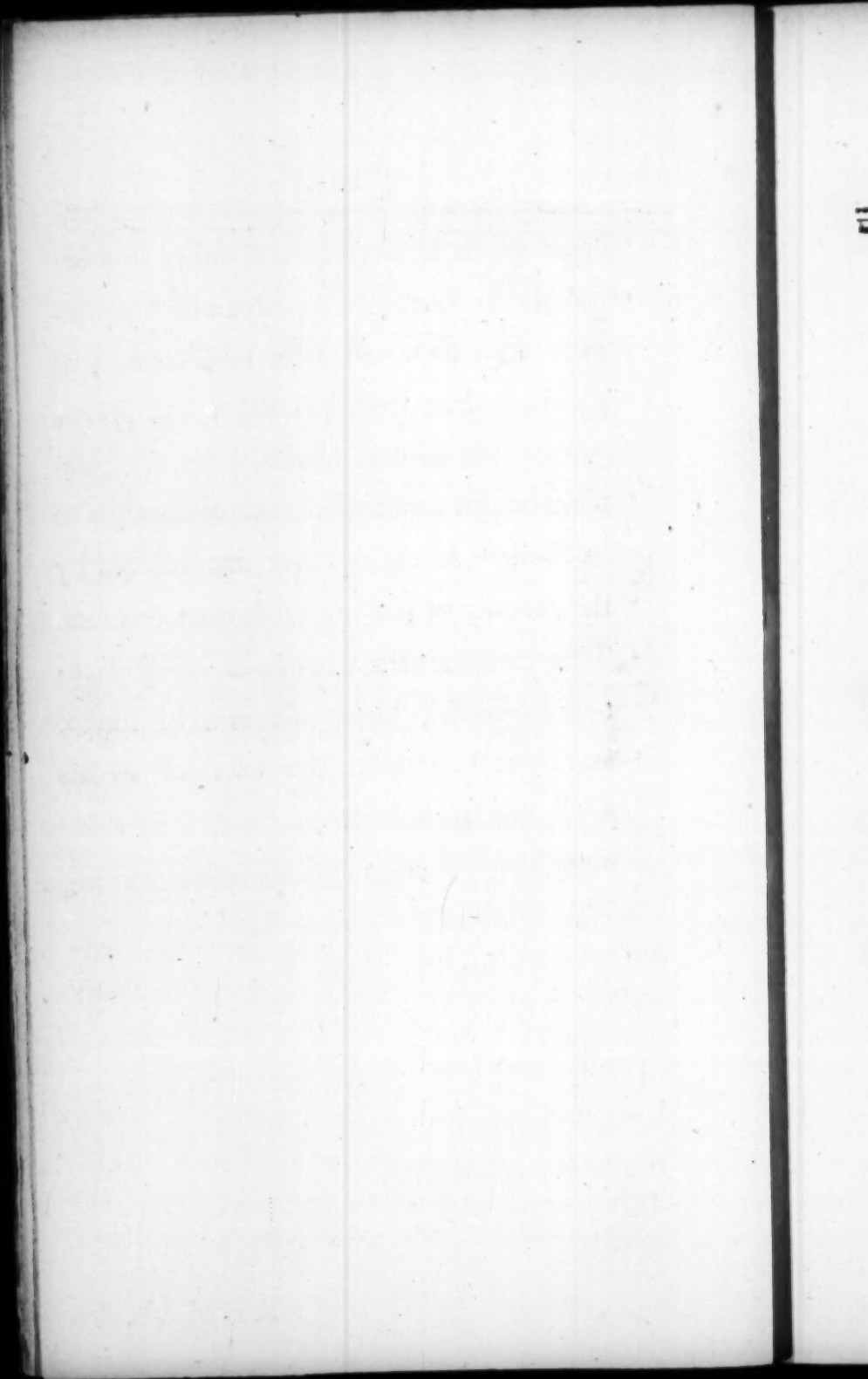
97.
' **P**OLITICIANS remark that no op-
' pression is so heavy and lasting as that
' which is inflicted by the perversion and
' exorbitance of legal authority. The rob-
' ber may be seized, and the invader re-
' pelled whenever they are found ; they
' who pretend no right but that of force,
' may by force be punished or suppressed.
' But when plunder bears the name of
' impost, and murder is perpetrated by a
' judicial sentence, fortitude is intima-
' ted and wisdom confounded ; resistance
' shrinks from an alliance with rebellion,
' and the villain remains secure in the
' robes of the magistrate.'

— ‘ Shame upon every government,
 ‘ in which men are left to do themselves
 ‘ justice ; or in which so little care is taken
 ‘ to proportion punishments to crimes, as
 ‘ to give room for one man to suffer under
 ‘ the most rigid prosecution for a trifling
 ‘ offence, while another, guilty of the most
 ‘ horrid of crimes, may elude the hand of
 ‘ justice by the good offices of a friendly
 ‘ judge. In every land of liberty there
 ‘ should be promulgated a proportional pu-
 ‘ nishment for every known crime, at the
 ‘ same time the power of every part of the
 ‘ legislature and administration should be
 ‘ determined and made known ; that the
 ‘ people might neither plead ignorance nor
 ‘ be ensnared into guilt. In countries where
 ‘ it is not so ; but where crimes that are
 ‘ daily committed are punishable at the dis-
 ‘ cretion of stipendiary judges ; where there
 ‘ are

‘ are men, or bodies of men, either in a le-
‘ gislative or judicial capacity, who keep se-
‘ cret, or take upon them to determine at
‘ pleasure, their own privileges and prero-
‘ gatives ; in such countries, I say, the peo-
‘ ple, though free and licentious enough to
‘ be insolent to their prince, are enslaved by
‘ the tyranny of his and their own servants.
‘ They have not the honour of being slaves
‘ to a monarch ; but are slaves to his slaves,
‘ and those sometimes the vilest of all his
‘ pensioned sycophants.

EPISTLE TO JAMES BOSWELL, ESQ.

REMARKS



R E M A R K S

O N T H E

R I O T A C T, &c.

THE late murders, committed under the sanction of legal authority, and the specious pretence of preserving the public peace, cannot fail to give the greatest alarm to an humane and sensible people. The general indignation also must be equally excited against those who affect to inculcate the necessity of resting the support of civil authority on military execution.

I shall not waste words, therefore, in endeavouring to cast an odium on measures so universally detested, so avowedly unconstitutional. The plea of justification in these cases, is an object,

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however,

however, that requires our most serious investigation. It is founded principally on the *Riot Act*; in the construction of which our lawyers appear to have deviated so far from common sense and common humanity, that I even shudder to enter upon an examination of the proofs of their insensibility.

The Riot Act is of no earlier date than the reign of George the first; made to serve a temporary purpose, and too severe not to call for a repeal when that purpose was served. Yet, severe as it is in the letter, those who have been entrusted with its execution, have added so much severity to the spirit of it, that happy is it for this nation no such law was in being while the Stuart family were on the throne. Had the Riot Act existed before the abdication of James the second, there is no doubt but it would have as effectually precluded the revolution, as it has since effectually operated to prevent a second restoration.

But though I contemplate with pleasure its happy effects in this particular; though I think it has, in a political view, been attended with
some

some good consequences to the public, I cannot reflect without horror how unnecessarily fatal it has been on many occasions to innocent and inconsiderate individuals. These occasions have indeed of late years been so frequent, that they are almost grown familiar, and the horrid circumstances attending them become indifferent. Time was when the sacrifice of a single delinquent to the rigour of this statute was clamorously censured. At the execution of Penlez*, even the robber was overlooked in the rioter, and the severity of his fate universally lamented. At present the massacre of as many unfortunate persons as serve to constitute a riot, is less regretted by many, than the finding a bill of indictment against the magistrate, by whose order they were slaughtered. Such is the implicit subjection of servile minds to the hand of power, though stretched forth for their destruction !

I am persuaded, however, that this is far from being the case with the generality of my fellow-countrymen ; whose useful lives, should the fol-

* Executed about seventeen years ago, for being concerned in a riot near St. Clement's Church in the Strand.

lowing remarks be in any degree the means of preserving, I shall think both my time and labour in their production most happily bestowed.

To this end, and to prevent the repetition of such cruel exertions of presumed authority, I shall endeavour to shew, from the Act itself, that it neither recommends nor warrants the civil magistrate's ordering the military to fire in any case upon a crowded and defenceless multitude. At the same time I doubt not to make it appear, that, even supposing the words of the act will bear such a construction as may justify a magistrate in a court of law, it is a proceeding no less cruel than unnecessary, as incompatible with the principles of natural justice, as it is inconsistent with those of humanity.

The title of the Riot Act is, *An act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters.* It is a maxim in civil government, that the law seeks no revenge. The punishments it inflicts are merely exemplary, and are calculated to prevent the future commission of crimes; not to avenge itself on the criminal for what is past.

Public

Public justice is inexorable, but it is never cruel. The ministers of that justice, therefore, abuse it when they arm it with their own passions, and proceed to *destroy* where they should only *correct*.

The words of the act run thus :

“ Be it enacted, &c. That if any persons, to the number of twelve or more, being unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace ; and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff or bailiffs, or other head-officer, or justice of the peace of any city or town-corporate, where such assembly shall be, by proclamation to be made in the king’s name, to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, shall, to the number of twelve or more (notwithstanding such proclamation made) unlawfully, riotously, and tumultuously remain or continue together, by the space of one hour after such
command

command or request made by proclamation, that then such continuing together to the number of twelve or more, after such command or request made by proclamation, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy."

I make no objection here to the rigorous and arbitrary terms of this statute, on the supposition that the peculiar circumstances of the times when it was made, rendered them politically necessary, and that the legislature of every country have a right to enact what laws they please, without considering how far they are consistent with the universal principles of reason and justice†.

Admitting hence, that the penalty enacted by this statute is no more than adequate to the crime ; let us proceed to enquire how such penalty is incurred, and how it is to be inflicted,

† Not that this position is indisputable. Very far from it : But *non hic est locus*.

“ And

“ And be it further enacted by the authority
 aforesaid, That if such persons so unlawfully,
 riotously, and tumultuously assembled, or twelve
 or more of them, after proclamation made, shall
 continue together, and not disperse themselves
 within one hour, that then it shall and may be
 lawful to and for every justice of the peace, she-
 riff, or under-sheriff of the county, where such
 assembly shall be, and also to and for every high
 or petty-constable, and other peace-officer within
 such county, and also to and for every mayor,
 justice of the peace, sheriff, bailiff, and other
 head-officer, high or petty-constable, and other
 peace-officer of any city or town-corporate where
 such assembly shall be, and to and for such other
 person and persons as shall be commanded to be
 assisting unto any such justice of the peace, sheriff,
 or under-sheriff, mayor, bailiff, or other head-
 officer aforesaid (who are hereby authorized and
 empowered to command all his majesty's subjects
 of age and ability to be assisting to them therein)
 to seize and apprehend, and they are here-
 by required to seize and apprehend such per-
 sons

sons so unlawfully, riotously, and tumultuously continuing together after Proclamation made, as aforesaid, and forthwith to carry the persons so apprehended before one or more of his majesty's justices of the peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against for such their offences according to law."

We find nothing here that recommends the magistrate to call in the aid of the Military ; much less authorising him to order them to destroy the rioters, by firing upon them, as upon an armed enemy in the field of battle. Nay, not a word is said even about arms of any kind. The magistrate is empowered to call in the assistance of *all* his majesty's subjects of *age and ability*, in order to enable him to *seize and apprehend* the rioters, and have them *dealt with according to law*. Here is not the least authority given him, as there cannot be the least plea, for killing such rioters ; since, being required only to take them prisoners, and being empowered to call in all his majesty's subjects to his assistance, he cannot pretend inability to do his duty for want of sufficient

cient aid. Or if in any case such aid should for a short time be wanting, he is certainly required to do no more than he is legally enabled to do; and it would better become him, both as a magistrate and as a man, to content himself with doing all he conscientiously may, than, by destroying his fellow creatures, to do so much more than his duty requires.

If he should rashly do this, however; it is said, he is justified; because it is further enacted,

That if the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed, or hurt, in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting the persons so dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, that then every such justice of the peace, sheriff, under-sheriff, mayor, bailiff, head-officer, high or petty-constable, or other peace-officer, and all and

singular persons, being aiding and assisting to them, or any of them, shall be free, discharged, and indemnified, as well against the king's majesty, his heirs, and successors, as against all and every other person and persons, of, for, or concerning the killing, maiming, or hurting of any such person or persons, so unlawfully, riotously, and tumultuously assembled, that shall happen to be so killed, maimed, or hurt, as aforesaid.

It is very plain, by the express words of this clause, that the killing, maiming, or hurting, which is hence justifiable, must be such as accidentally arises from the resistance which the rioter makes to his being seized or apprehended.

Can it with any justice be pretended, that when a party of soldiers are ordered to fire upon a defenceless mob, the persons who drop, or are wounded, *happen* to be killed or hurt by their resisting those who want to seize or apprehend them?

But

But the word *dispersing* is made use of in this part of the clause ; whence it may be pretended that when the soldiers are ordered to fire on the people, they do it to *disperse*, if not to seize or apprehend, them. In answer to this, it is to be observed that, when a magistrate orders the soldiers to fire over the people's heads, he may with some propriety pretend, he does it to disperse them ; but when he orders them to level their muskets and kill as many as they can, I wonder how, he thinks that, people who are killed or maimed are to disperse. Dead men at least can no more *disperse* than they can be *dealt with according to law*.

Will it be said, it is an effectual way of dispersing those who remain unhurt ? It is so, for a while ; but one act of violence generally produces another. It is a mistake to think the public peace is to be preserved by the forcible suppression of a local riot, occasioned by general motives of discontent. On the contrary, such violent measures too frequently tend to irritate the minds of the people at a distance ; to excite murmurs against government, and set the

whole kingdom in a flame. The people are an hydra, a many-headed monster, from whose decapitated trunk heads sprout forth anew as fast as they are cut off. To take such steps to quell a mob, therefore, is to foment a rebellion !

But were this method of suppressing riots really effectual, it is not justified by the *Riot Act*; for the word *dispersing* in this part of the clause cannot possibly be extended to justify the act of firing upon the people ; because it is not mentioned in the former part, by which the magistrate is empowered to act. He is not empowered to call in assistance to *disperse*, seize and apprehend the rioters ; but is required only to request and command them to disperse ; and if they do not disperse of their own accord within the time limited, he is then empowered to call in assistance, [not, I say again, to *disperse*, but] to *seize* and *apprehend* them for not dispersing. This is the only mode of action prescribed by the statute, and therefore the only legal means a magistrate can take to suppress a riot. He is not empowered wilfully to *destroy* some, in order to *disperse* the rest ; but is expressly directed to seize and apprehend

hend as many as do not voluntarily disperse when legally required and commanded. Such are the clear and express terms of the act.

I shall now proceed to illustrate these general observations, by applying them to those recent facts, which have so greatly and so justly alarmed the nation. I mean the very horrid massacre that was made, on the 10th of May last, of many innocent persons in St. George's-fields, and the very honourable acquittal of the magistrate, who then ordered the Military to fire, at the Old Bailey on the 13th of July.

With this view I shall take a critical survey of the cursory sketch of Mr. Gillam's trial, which first appeared in the public news-papers, and was by that means dispersed throughout the kingdom*. I presume the evident partiality this account betrays in his favour, will authorize me in making use of such representation, as the real

* It is this circumstance which renders many a literary performance, otherwise contemptible both in matter and manner, an object of considerable importance.

state of the case. Indeed I should be very sorry to have more room for disapproving the whole proceeding than even that very favourable representation affords me.

“ Monday morning, about ten o’clock, Samuel Gillam, Esq; one of his majesty’s justices of the peace for the county of Surry, was tried at the Sessions-house in the Old Bailey, for the murder of one Redburn, a weaver, in St. George’s-fields, on Tuesday the 10th of last May, by giving orders to a party of the third regiment of guards to fire upon the populace, which order being complied with, Redburn unfortunately lost his life.

The prosecution on this trial was conducted in the name of Redburn’s widow; and in the course of the evidence against the prisoner, it appeared, that a prodigious concourse of disorderly people had assembled on Monday the 9th of May, in St. George’s-fields, where, after they had continued a considerable time exclaiming Wilkes and Liberty, they made an attack upon the King’s-Bench Prison, threw stones into the Marshal’s house, and at length burst open the outward gate of the prison, to the inexpressible terror of the keepers, who not only apprehended that the prisoners would, in this confusion, make their escape, but imagined their own lives must be inevitably endangered,

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endangered, if they resisted the ungovernable fury of the rioters. Notwithstanding these apprehensions, however, the keepers guarded the inner doors of the prison so successfully, that the mob dispersed without effecting their purpose."

It is hardly worth while to observe with what pains this writer endeavours to exaggerate the circumstances of his relation. The prosecution, says he, was carried on *in the name* of the deceased's widow. Why not by the widow herself? Was not the distressful situation, in which this poor creature was left with a numerous family of children, sufficient to excite in her a just resentment against the murderers of her husband? and was it not very natural for her friends, or even the common friends of humanity, to assist her in endeavouring to bring them to justice?

On the day preceding the murder, we are told, a *prodigious concourse of disorderly people* assembled in St. George's-fields.—That some of those people were disorderly there is no doubt; but that their *number* was so *prodigious*, or their *fury* so *ungovernable*, as is here represented, is false,

false, upon the very face of the account ; since it was in the power of a few door-keepers to withstand their *attack on the prison*. As to the *inexpressible terror* and *inevitable danger* to which those respectable members of community were subject on this occasion ; their delicate sensibility must undoubtedly have rendered their situation extremely distressing ! In regard to their pretended apprehensions, however, they appear to have been entirely groundless.

I do not, indeed, well understand what is meant by the *outward gate*, unless there has been a wicket to a little wooden box*, erected without the walls of the prison, apparently to keep the visitants dry who stand knocking at the door in rainy weather till Mr. Turnkey is at leisure to admit them. But nothing can be clearer than that the *prodigious concourse* of dis-

* A kind of edifices, of which I have known twenty, belonging even to the collectors of the revenue, tumbled by a Dutch mob into the canals of Amsterdam, without inducing the magistrates of that wise and free republic to call in the military to avenge such outrages by a single murder.

orderly

orderly people assembled in the fields, either had no other intention than that of gratifying their curiosity in staring at Mr. Wilkes, or that the worst of their intention was, the setting him at liberty.

Now the worthy keepers knew that the rioters might not only break the outward wooden portico to pieces, but might have broken also into the turnkey's lodge, and have even taken their favorite along with them, without being able, if they had been desirous, of letting out any other prisoner whatever. For it is to be observed, that Mr. Wilkes is not confined within the inner door of the prison, with the debtors and other prisoners, but has apartments over the lodge, between the outer and inner doors. A precaution this, evidently taken for the security of the Marshal, in case of the riots, so justly to be apprehended on Mr. Wilkes's commitment; though from the opportunity it gave the populace of seeing him sometimes at his windows, it very naturally contributed to draw their attention. Thus it seems, as if, by a strange fatality attending the whole proceedings against this popular personage,

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a mixture

a mixture of prudence and absurdity, of alternate timidity and fool-hardiness, was to render his prosecutors as hateful to their country, as he has been rendered obnoxious to the court.

But “ *the mob dispersed without effecting their purpose,*” viz. at the worst, without breaking through that door, by which they might have set the sole prisoner they wished to see at liberty. It does not appear, therefore, that if the rioters were very numerous they were very unruly, or if they were very unruly that they were very numerous.

Why then should there have been made such a formidable apparatus for their reception the next day? Can it be doubted, that the report, so universally spread of the soldiery’s holding themselves in readiness to make their appearance in St. George’s Fields, brought many an inconsiderate spectator to the spot, and among them, perhaps, the unfortunate individual who was murdered?

Had not the crowd been increased by this method of bringing the people together, the
mob

mob would in all probability have dispersed as quietly the second day as the first? Certain it is, that nothing so exasperates the populace of England, as the appearance of subjection to military power. This is well known, and being known should have prevented so rash and imprudent a step. For at worst the mob would only have set Mr. Wilkes at liberty. And what then? Would this have been a more terrible circumstance than the massacre of a number of innocent persons, who now fell indiscriminately with the guilty? * Would not the guilty even in that case have been open to the law, and liable to the punishment due to their crime? † What dreadful consequence was to be apprehended from Mr. Wilkes's escape? Nay, what reason is there to think he would have escaped? Did he not go voluntarily into prison when rescued by the populace at the time of his first commitment? Say, the mob had forcibly taken

* And that many such did fall, appears from the affidavits made before proper magistrates, by several persons who were eye witnesses to the facts; some of them inserted in the public news papers.

† A punishment no less than death; their crime being adjudged felony, without benefit of clergy.

him away, nobody could have more reason to fear the consequences than himself; to whom their intended kindness might have proved fatal; as it had liked to have done when the mob carried him in his sedan on their shoulders from Guildhall.

Had the outlawed patriot ever appeared like an outlawed smuggler, at the head of the rioters in arms; had he, like Wat Tyler, to whom he has been most ridiculously and groundlessly compared, personally fomented such tumults, there had been some danger of his being set at liberty. But what public danger was to be feared from the rescue of a man, who would have stolen again the next day into prison?

The mob, indeed, threw stones, as it is said, into the Marshal's house? *Hinc illæ lachrymæ!* What an insult! "A dog's obeyed in office!" and shall the Marshal of the King's Bench prison have stones thrown into his house?—yet, heinous as this offence was, surely our laws afford some milder remedy against throwing stones, than immediate death without judge or jury!

“ But

“ But the Marshal dreading their return the next day, and fearing still greater outrages from their turbulence, applied to the magistrates for assistance, and a party both of horse and foot guards was ordered to be in constant readiness to give every necessary support to the civil authority.”

And the drums beat to arms! in support of the civil authority! †

“ Next day, as the Marshall suspected, the mob came, increased greatly in number, to St. George’s Fields.”— No doubt of it, as they would to see the retreat of Fontenoy acted over again by the same soldiers on Wimbledon Common!— “ But it seems they exclaimed as before, Wilkes and Liberty, and appearing not only from the circumstance of their increase, but from the tenour of their exclamation, to be determined upon a repetition of their outrages; the magistrates, attended by the guards, judged it absolutely necessary to stand forth for the preservation of the peace, the honour of the laws, and the security of government.”

The tenour of these tremendous words *Wilkes and Liberty*, must surely be something very dif-

† As they would have done to quell a Scotch rebellion, or repel a French invasion! and as loudly as when the former was real, and the latter imaginary.

ferent

ferent from the *purport* of them, to convey such terrible ideas to the apprehension of our magistrates!* “*The preservation of the peace!*” says this writer? for heaven’s sake, what consequences could flow from the breach of it, so destructive as the measures taken to preserve it? — “*The honour of the laws!*” Shame upon such laws as require the perpetration of murder to do them honour! — “*The security of government!*” Confusion to that government whose security is founded on the shedding of innocent blood! The constitution of England gives countenance to no such laws, nor needs a constitutional government so abhorred a security.

But to proceed.

“*Among the magistrates, thus discharging their duty, Mr. Gillam was very much distinguished. He expostulated in the gentlest terms with the populace, on the dangers which were likely to arise from such an illegal assembly, and made use of every argument to disperse them, which could be offered*

* Certain it is, those words have acquired by a very general concatenation of ideas, the force of a political charm; to whose *modus operandi* I confess myself a stranger. But my indignation at the dreadful consequences of this prelude, suppresses the smile of contempt that arises from its absurdity.

by

by reason, or urged by humanity. Unhappily, however, his expostulations, as well as those of the other justices, were wholly disregarded; they preached to the winds, and were reduced to the disagreeable necessity of reading the proclamation: but though the consequences were fully explained to the inconsiderate rioters, though they were informed that all, who remained an hour after the proclamation was read, would be guilty of felony, without benefit of the clergy, they were as insensible to threats as to exhortations, and not only hissed, hooted, and reviled the soldiers, who endeavoured to scatter them, but actually threw stones at the magistrates. They were then told, that the guards would certainly be ordered to fire, unless they desisted from such wanton, such scandalous outrages; but this information had no effect whatsoever; and Mr. Gillam, immediately after receiving a violent blow from a stone, the order for their firing was accordingly given, in which the unfortunate Redburn lost his life. Such was the general substance of the evidence given against Mr. Gillam; though one or two of the witnesses put the most unfavourable construction on his conduct, and declared, that to the best of their judgments, there was no absolute necessity for firing."

I wish by no means to deprive Mr. Gillam of the distinction he merited, as an active magistrate, from the verbal remonstrances he made use

use of on this occasion : nor do I at all wonder that they availed so little. Every one knows, that he who talks to a mixed and noisy multitude, will generally *preach to the winds*; being utterly incapable, from the very nature of his situation and circumstances, either to give that information or explanation which this writer pretends was so *fully done*. Some few of the auditors may possibly profit by the expostulations made use of, in these cases. Indeed when the number of rioters is small, they almost always do; but when their number is great, as men cannot well be affected by remonstrances they do not hear, so it is no wonder by far the greater part should continue as ignorant and inconsiderate as they came.

As to their being told by the magistrates that the guards would be ordered to fire, the threat was as insolent and vain as the putting it in execution was weak and wicked. When magistrates threaten *vengeance*, instead of *performing* their *duty* as prescribed by *law*; when they threaten immediate death to men entitled to a trial by their peers even for wilful murder; who can wonder, if a daring multitude insensible of their
danger

danger, and supported by each other, should laugh in the face of authority, and treat it with contempt?

That an English mob should hiss, hoot, and *revile* a party of Scotch soldiers, who had already murdered one of their number, is also little to be wondered at *: a grievous fault it was, and grievously did Englishmen answer it! But they proceeded to throw stones, one of which struck the justice himself; who *then* gave the order for firing.

It is certainly a disagreeable and perilous situation to which a magistrate is exposed upon these occasions; but where is the post of honour unattended by danger? Should the ordering a drunken sot to the stocks, or committing a street-

* Young *Allen* having been murdered long before Justice *Gillam's* order for firing; a circumstance that very naturally provoked the mob to *revile* the soldiery; tho' it must be owned, to the great humanity and forbearance of the magistrate, that, after they began to throw stones, he was not provoked to retaliate their club-law till he actually received a knock himself.

walking strumpet to Bridewell, entitle a magistrate to the respect and dignity he exacts from his office? Surely where so much is given, more is required! We have heard of gentlemen who have nobly supported the dignity of the civil magistrate, at much greater hazards. How much more to the honour of Mr. *Gillam* would it have been, had he imitated on this unhappy occasion, the behaviour of an *HOLT* or a *JANSSEN*.^{*} Was the first stone that offended *him*, to be the signal for a volley of bullets to be discharged among a crowded defenceless multitude? *Hoc-cine est humanum factum aut inceptum? Hoc-cine est officium MAGISTRATÛS?*

As this gentleman has been legally tried by his country and acquitted, he must in the eye of the law be acknowledged innocent of the crime for which he was indicted. I declare I am very far from wishing he had been found guilty; tho' I am sorry such authorities

^{*} The present Chamberlain of London; whose behaviour in the discharge of his duty when sheriff, as well as that of Lord Chief Justice Holt, on a similar occasion, is universally known and applauded.

should

should prevail as those by which the magistrate is supposed impowered *ex officio* to commit actions so inconsistent with a natural sense of justice; and which must be as incompatible with the public peace of the community, as the actual commission of such facts must be to the private peace of mind of a conscientious individual. For I am very certain that an humane and thinking man, however he may be acquitted in a court of law, must on these occasions pass a severe sentence on himself *in foro conscientie*.

In the fairest point of view, this latitude of slaughtering our fellow-creatures is dreadful. What then must it be, if we suppose, on the other hand, the magistrate who is possessed of this dangerous power, to be revengeful, cruel, irascible, or headstrong! And that there are such men in the world, is certain; nor doth a *dedimus potestatem* necessarily correct the passions, tho' it appears to absolve the most sanguinary from guilt.

In regard to the *absolute necessity* for firing, nothing can be more absurd than such a pretence. That magistrates, having a legal autho-

city to raise the *posse comitatus*, and actually attended by a large party of armed guards, should be under any absolute necessity of firing upon an unarmed multitude, is truly ridiculous. But that they should conceive themselves in such circumstances under an absolute necessity of doing that, which they were not legally impowered to do at all under any circumstances, is to the last degree presumptuous and contemptible,

Of this at least I am certain that it would have been more constitutional for half a score rioters to have been taken up and hanged, in the ordinary course of justice, for having knocked a soldier or two o'the head, than for the same number to be put to death, as they were, by military execution on the spot.

Is it pretended this unconstitutional step was necessary in support of the dignity of the laws? The laws never are invested with true dignity, but when they are supported by the civil authority of their proper officers. I am afraid, indeed, it is not the honour of the law, of which the advocates for the intervention of the soldiery are
so

so tenacious ; but the personal influence and security of its overbearing and dastardly ministers. These would transfer the honour, due only to the laws, to themselves ; and, rather than put up with the smallest indignity, would revenge a particular insult by a general massacre. *Quousque horrendum nefas !*

To go on with the narration.

“ *As Mr. Gillam neither called a single witness in his favour, nor made the minutest defence, either by himself or council, the moment the evidence for the prosecution was closed, the Hon. Mr. Justice GOULD stood up, and declared that he thought Mr. Gillam perfectly justifiable in the whole of his proceedings : his lordship quoted several established authorities, which proved, beyond a doubt, that a magistrate, when there is any occasion to support the laws, has a right to demand assistance from all his majesty’s subjects who are capable of bearing arms ; that he is empowered to arm them with such weapons as are most likely to quell any riot, and that consequently if he has a right to give them arms, he has a right to direct the use of these arms, as he judges requisite for the preservation of the peace.*”

I am here under some apprehension that the arguments of the learned judge are misrepresented.

fented. As to his private opinion, I will say, as another learned judge says on another occasion, it weighs not a feather with me. A single judge, or a whole bench of judges, may be mistaken. They are but men *et humanum est errare*. Great lawyers in particular are strangely apt to mistake ancient custom, and the unquestioned practice of the courts, for authorities founded on the constitutional principles of common or statute law.

What indubitable authorities his Lordship could bring to prove that a magistrate may on these occasions arm his assistants with *any kind* of weapons, and direct them to make *such use* as he *thinks proper*, I cannot conceive. It is set forth in the preamble to the Riot Act, that the laws in being before that time were insufficient for the prevention and suppression of riots; for which reason that statute was confessedly made. In this Act, however, nothing is said about the *kind*, or *use*, of ARMS necessary to put it into execution. It is plain also both from the letter and spirit of it, that no other weapons can be understood necessary than such as are simply requisite to enable the magistrate and his assistants to do what they are directed, viz.

viz. to *seize* and *apprehend* the rioters.* Their arms ought to serve, and to be used only by way of capture and self-defence; to withstand the violence, and overcome the opposition, of such as refuse to surrender themselves to justice. For, if it be a maxim in our laws that every one is presumed innocent till he be found guilty, surely no man ought to be punished or executed before he is brought to trial!

It is expressly mentioned in the great charter of English Freedom, MAGNA CHARTA, that no freeman shall be outlawed, exiled, or *otherwise destroyed* but by lawful judgement of his peers, or by the law of the land. Now, if a Justice of peace be empowered to arm his assistants, with fire arms, or to chuse assistants so ready armed, and then order them to fire upon the people, as in the case of riots, he is himself invested with both a legislative and executive power; his *word* becomes in fact the *law of the land*.

What a dangerous delegation of authority this would be, and what would be the consequences, I tremble to think!

* At *Constantinople*, the *Janizaries* are permitted no other weapon than a large taper club. For Heaven's sake, are *Englishmen* greater slaves than the *TURKS*?

To say that because a magistrate is empowered to furnish arms, he has a discretionary right to direct the use of them, is besides as absurd as it would be to say that because a man is qualified to kill game, and authorize his game-keeper to carry a gun for that purpose, he is authorized also to direct him to shoot the first poacher he sees on the manor.

The plea of self-defence cannot be made in these cases ; for as the magistrate is not limited to the number of assistants he shall call ; he may always, if he will but take time and give himself the trouble, have sufficient force to resist any personal outrage, and make as many prisoners as will stay to be taken ; without being under the apparent necessity of killing any one of them.

The latter, to be sure, is the more ready and effectual method of suppressing a temporary tumult ; as in desperate cases he might on the same principle not only send for a party of the third regiment from the Tilt-yard, but a battery of field-pieces from the Tower ; for if as

“ *his*

"his lordship, moreover, observed, a magistrate, upon proper application to him, is obliged to take every possible method to suppress riots," he is doubtless justifiable in ordering the rioters to be *destroyed* as fast as possible. In this case, however, there would be no impropriety in making an amendment in the Riot Act ; relative to the mode of such suppression ; and, instead of enacting that persons, not dispersing within an hour after the proclamation, should be apprehensible and adjudged guilty of felony ; let it be enacted that they shall be liable to be shot to death upon the spot. People then might know what they had to trust to, on these occasions.

We are told his Lordship observed that riots "*are of all other things, the most disgraceful as well as the most dangerous infractions upon the laws of the community.*" What ! worse than murders and massacres ? I do not pretend to justify, or apologize for, riots ; but I think the circumstances as well as the motives of popular insurrections, ought to make a very

essential difference between the guilt of the parties concerned in them. When rioters are unarmed, even their punishment by law is surely too great for their crime, if we consider how far their guilt is owing to ignorance * and inattention. But that they should be massacred by a small number of armed men, when they might be dispersed or taken prisoners by a greater number, is most certainly inhuman if not impolitic, and that in the highest degree.

“ Unless the peace was preserved, he judiciously added, we had no security for our property, our lives, or what is still more valuable, our liberty: and therefore as the magistrate was obliged to stand forth in times of necessity, for the support of the laws, the laws had expressly declared,

* The Legislature indeed, sensible of the rigour of the act hath provided in some degree against such ignorance, by directing that it “ *shall be openly read at every quarter-sessions, and at every Leet or Law-day.*” If this injunction
be

declared, that he should be indemnified for any personal injuries, which, in the execution of his duty, should happen to the disturbers of the public tranquillity. To this purport, but in arguments the most forcible, and in language the most correct, Sir HENRY GOULD delivered his opinion, and was immediately seconded by that great ornament of his profession, the Lord Chief Baron PARKER.

If this author was employed to write a panegyrick on the judges who tried this cause, he very rashly undertook a task, of which he has very grossly and bunglingly acquitted himself. The force of the arguments he has retained and the correctness of the language in which he has delivered them, speak but little in favour of his capacity to decide on those of the all-accomplished judges.

be not constantly obeyed, those, whose office it is to put this part of the act in execution, are guilty of a most criminal neglect; being eventually accessory to the murders in question. ~

To say that unless the peace were preserved we should have no security for our liberty, lives and properties, is a remark the most futile and frivolous imaginable. For till life, liberty or property be endangered, the peace is not broken.* There is a wide difference between a breach of the peace in open fields, streets, and highways, and the breach of that decent silence which should be observed in a church, a court of judicature, or even the officinal of a trading justice. It is proper the law should in all cases support its ministers in the execution of their office; hence the contempt of courts, and personal injuries done to acting magistrates in the discharge of their duty, are properly punishable, as tending to obstruct the ordinary process of law.

* It might, therefore, have been as *judiciously* said, The preservation of the peace is our only security against the breach of it. *Rijum teneatis?*

For the same reason it is that, in cases of riots the magistrate, being sometimes under the necessity of using force to apprehend and secure the rioters, he is and should be “ indemnified for any personal injuries which, “ in the discharge of his duty, should happen “ to the disturbers of the public tranquillity.” The questions, that suggest themselves on this occasion, are, what is the magistrate’s duty? Whether, by his giving orders for the Military to fire, he does not exceed that duty? And whether, by the employment of the Military, in preference to the *posse comitatus*, and his giving them orders to fire upon an unarmed multitude, the killing, maiming or wounding them, can fairly be imputed to accident, according to the plain and express meaning of the act?

If the learned judge brought such established authorities as proved beyond a doubt
the

the negative of the second question and the affirmative of the last; I have only to say they must have been authorities not established by the Riot Act; on which the justification of the magistrate is presumed to be founded.

We are told nevertheless, that the other judges on the bench were of the same opinion.

“ The Lord Chief Baron, besides expressing the warmest approbation of the arguments made use of by the very learned judge who spoke before him, said, he was old enough to remember the occasion on which the Riot Act was made, in the reign of George the First; and knew that it was drawn up by two lawyers, perhaps as able as any that ever appeared in this country.”

I do not doubt the abilities of the lawyers who drew up this act. I find no fault with the Act itself but the general severity of it. It is the interpretation our present lawyers put on it, of which I complain. It is the arbitrary

arbitrary manner of putting it in execution, equally irreconcilable to the terms and tenour of the Act itself, as to the principles of justice and humanity.

“ He remarked, that if any mob continued together an hour after it was read, they had nobody but themselves to blame for disagreeable consequences; and added, that if in cases of this nature, where the laws were resisted, an innocent person should even suffer, it was to be lamented as a misfortune, and not imputed to the magistrate as a crime. To shew the propriety of this reasoning, his Lordship was pleased to put the following cases: suppose, observed he, that a man should fire at a person to whom he bore some implacable hatred, and missing this person, the ball should kill one, against whom he did not entertain the least resentment: in this case, remarked his Lordship, the very accident would be murder, because he acted with a mischievous intention. But, suppose, continued he, that a man, attacked by a highwayman on the road, should draw a pistol to defend himself, and in firing at the robber should kill an innocent man, the act would neither be murder nor manslaughter; it would only be a misadventure, pitiable as an unhappiness, but not punishable as a crime.”

This

This argument, that the law is known, and therefore those who break it, have nobody to blame for the consequences but themselves, is certainly unanswerable ; and in general it ought to be so. But in cases where the punishment is apparently so much greater than the crime, and the temptation or tendency to the commitment of such crime be so very natural, surely some allowances should be made in favour of the delinquent ! The present favourite maxim among the lawyers of *fiat justitia ruat cælum*, should be cautiously adopted in a country whose laws are often but temporary expedients, enacted for the support, and dictated by the occasional exigences, of government. The difference between *law* and *right*, is indeed too frequently conspicuous, not to put us constantly in mind of that other ancient maxim in the law, *summum jus summa injuria*. By what spirit, then, could the celebrated judge be actuated, who so lately

ly

ly declared from the bench, his holding the temper of the times in such utter contempt, that though insurrections and even rebellion were to follow his determination, he would not alter it; although in a case that respected only the punishment of a single criminal for an offence not capital?*

For heaven's sake! are laws made for the general good of the community, or the private gratification and emolument of magistrates and judges? None can have a greater reverence for those honourable characters than myself; but it is only while the personage acts consistently with his character, and in conformity to those ends for which his office was instituted. A justice of peace, and even a

* And that a criminal too, whom the said judge professed he was inclined to favour!—But perhaps L. M.'s declared inclination to favour Mr. *Wilkes*, is really, as it is somewhere suggested, a burlesque too gross to pass with propriety on a solemn court of judicature.

petty constable, is a respectable character, while he only exerts the power, he is legally invested with, to keep the peace. But for whose sake ought the peace to be so inviolably and religiously kept at all? Doubtless primary and ultimately for the sake of the people, and only secondarily and mediately for the sake of the government and its ministers.

When the officers of justice, therefore, arm themselves, or call in armed assistance, to destroy those offenders, whom it is their duty to seize and apprehend, in order to have them dealt with according to law; they go out of their proper sphere; they do not act, as required, in support of the law; but set themselves above the law, and trampling upon civil order and justice, make open war on the people. How this can be adjudged innocent or justifiable in a country professedly governed by law, is to me inexplicable!

In

In regard to the illustrations adduced to shew the propriety of his Lordship's reasoning; they neither of them apply. The plea of self-defence in the present case is, as I before observed, out of the question; unless it be humanely pretended that the soldiery, standing in their ranks and firing, were taking the proper means to seize and apprehend the rioters; whom it was necessary for the soldiers, in their own defence, to kill, maim or wound, before they might venture to attempt to take them prisoners.

What valorous supporters of the *civil* authority would this make our military heroes of the horse and foot guards!

It is yet farther related, that

“After the L. C. Baron, Sir RICHARD ASTON, so eminent for his abilities, and so distinguished for his humanity, delivered his sentiments: he agreed, he said, entirely with the two learned judges who had spoken, and

gave several instances where, from want of attention to suppress riots in their commencement, the constitution of this country was in danger of being totally subverted. Particularly in Richard II.'s time, by Wat Tyler, where, tho' the matter in dispute was originally no more than payment of a groat, the issue threatened inevitable ruin to the kingdom. His Lordship observed, that if the assembly in St. George's-fields was not a riotous one, he knew not by what name to call it. The populace there, had attacked one of our principal prisons, continued their unlawful assembly after the time limited by the Riot Act, and not only insulted, but threw stones at the magistrates, who were attempting to disperse them."

I subscribe with both hands to this eminent judge's opinion, in regard to the dangerous nature of riots, and the expediency of a vigilant attention to suppress them in their commencement; but I hope the writer deceives us, by insinuating that his Lordship would have them suppressed by means unwarranted by law. He certainly must. Sir Richard Aston is too good a lawyer and too good a man,

man, to have given countenance for what this narrator has affirmed of him. I shall look upon this part of the relation, therefore, as the misconceived suggestions of some young Hibernian templar, who has not long enough argued moot-points, to be able to comprehend with sufficient precision the arguments of a judge on the bench.

It may not be improper, however, to take them under consideration, as they seem to confirm the preceding opinions of the other judges.

Whether Mr. Templar knew or not, by what other name than *riotous* to call the assembly in St. George's-fields, is a matter of very little consequence. There is no doubt it was a riotous assembly at the time when Mr. Gillam ordered the foldiers to fire, with a view to disperse them. The point in dispute is, by what authority did he take that method to disperse them.

I have

I have shewn that, by the Riot Act, he was only required to *request* and *command* [not *compel*] them to disperse; and if they did not disperse within the limited time, that then he was required and empowered to call in able assistance to *seize and apprehend* such as refused.

“ *As to the introduction of the Military, in preference to the posse comitatus, our Templar says, the justices were no way reprehensible. The law made no difference between a red coat and a white one †; soldiers were no more*

† How is this? the law makes no difference between a *red* coat and a *white* one! Mercy upon our lives, liberties and properties! I remember to have read in *Scribblers's Reports*, indeed, when I was a mooter, of the lawyers ingeniously confounding *black* and *white*, in the affair of *Stradling* versus *Stiles*, for the recovery of a sett of *PYED* horses. But this was allowed to be a singular case. If the distinction of *red*, however, a fixed colour, the least subject to aberration, be liable to the same ambiguity as *black* and *white*, which are no colours at all; we may expect in time to see our prismatical casuists split a cause, as clear as the light of noon-day, into all the colours of the rainbow.

exempted

exempted by their military character from assisting the magistrate in quelling riots, than any other members of the community. The law obliged all his majesty's subjects indiscriminately to assist upon these occasions; and, consequently, as there was a necessity for some assistance, none could be more proper than the Military, who are always in readiness, more easily collected, more subject to command, and more capable of defence, than any other part of the people."

The justices, it is here said, are *no way* reprehensible in preferring the introduction of the *Military* to the *posse comitatus*. Now I presume a very little attention to the terms of the Riot Act, and the slightest reflection on the dreadful consequences of calling in such Military, will convince any unprejudiced mind, that they were *every way* reprehensible.

That soldiers are not exempted by their military character from assisting the civil magistrate in quelling riots, is true; and pity it is, that it is so.

The

The fatal effects of their interposition sufficiently authorize me to say this; for which reason I cannot be of opinion that, because *some* assistance was necessary, that of the Military was the most *proper*.

That *they are always in readiness, and more easily collected*, I grant; but, as in the case of riots the law allows a considerable time for the voluntary dispersion of the people, a vigilant magistrate can seldom, if ever, want proper assistance, especially near populous towns, to support the *civil* authority without introducing the *Military*.

That *they are more subject to command* also, I readily grant, and sincerely lament that, on this occasion, they were so.

In telling us *they are more capable of* DEFENCE, the writer certainly made a slip of the pen; he undoubtedly meant to say OFFENCE.

The

The only arms the mob appear to have been provided with; were those casual and missile weapons they picked up on the common highway. Now I must own myself perfectly at a loss to conceive with what propriety a loaded musket can be called a weapon of *defence* against a man flinging a stone†. It could *defend* no otherwise than as it might *terrify*. But *pænal statutes* are the only *legal* means of *terri-*

† Unless indeed it were probable that, in the actual discharge of the musquetry, the balls should encounter the stones, and thus render both ineffectual.—But I beg pardon for trifling on so serious and important a subject.—Will it be urged that an *officer*, bearing the king's commission, is not to be degraded into a common *bead-borough*? That *gentlemen-soldiers* are not to be employed like *bailiff's followers*? Will it be said that this is not the business of the *Military*?—I answer, then the *Military* have no business with the *civil magistrate*; the learned judges themselves appearing unanimous, that they are to be called in, as his majesty's subjects only; and are therefore to act as any other of his majesty's subjects would be authorized to do on the like occasion.

*fy*ing the *free-born* subjects of this country from doing any thing they have a mind to. If, in aid of these, it be necessary even in the worst of times to call in the terror of the musquetry; let us fairly prove such necessity, and plead consistently that NECESSITY *has no* LAW. Let us not meanly injure the dignity of the best system of laws in the world, by descending to the pitiful chicanery of false construction; in order to skreen the most innocent culprit from conviction. If he be more unfortunate than criminal, the fountain of royal mercy is replete and open. He can there be absolved with propriety: but (to reverse the terms of a former observation) justice, though never cruel, should be ever inexorable. Indeed, not to be eventually cruel she must be so.

To have done with our Temple scribbler, by one more quotation.

Upon the whole, he was of opinion, that

“ *Mr.*

“ *Mr. Gillam had not only behaved justifiably but meritoriously.—He saw that he took all the pains of a good man to suppress the riot without proceeding to rigour ; but he also saw, that when no entreaties could prevail upon the mob to disperse, Mr. Gillam then proceeded, like a good subject, to consult the welfare of the public. This he was obliged to do, and was punishable if he did not do it.*”

Not only justifiable, but meritorious ! What a compleat *etourdi* is this blundering panegyrist ! The law had nothing to do with Mr. Gillam as a good man ; he was reprehensible, though perhaps too precipitately indicted, for not having been a good magistrate.—He could not suppress the riot without proceeding to rigour ! How was he required to suppress the riot by proceeding to rigour ? — Rigour ! What business had he either with rigour or lenity ?—If the first judge of the first court of law in the kingdom, thinks himself religiously bound to pronounce the decisions of the law, be the consequences what they will ; shall a

petty magistrate presume to act discretionally, when the statute expressly tells him what he shall do. If Mr. Gillam reluctantly proceeded to the rigorous execution of the act, he was reluctant in doing his duty. In this he might in the eyes of some people appear a *good man*, but he was certainly a *bad magistrate*.

On the other hand if, in throwing aside respective lenity, he proceeded to do more than the act rigorously required of him, he shewed himself not only a bad magistrate, but a bad man also.

When no entreaties could prevail on the mob to disperse, it is said, Mr. Gillam proceeded like a good subject, to consult the welfare of the publick. — A *good subject* ! Mr. Gillam was here acting as magistrate, and should have acted first as a good magistrate. To *entreat* was mean and unworthy of his character. The magistrate is expressly charged first, to *request* or *require*, and then to *command*.

Why

Why did not Mr. Gillam *command* the mob to disperse? If he did; he did all the law required of him to do, by way of suppressing the riot; unless it be in contributing to that suppression which would naturally follow from his endeavouring to seize the rioters and get them committed to prison. These are the only means of compulsion, the only rigorous measures he was authorized by law to make use of.

But, says this Panegyrist, the magistrate *was obliged, like a good subject to consult the welfare of the publick, and was punishable if he did not do it.* Where this new kind of law is taught, I know not; but this I know, that a man may in the eye of the law be a good subject, and not trouble his head about the public welfare at all; at least any farther than his own private welfare is connected with it. He is also punishable only for breaking the laws; as a magistrate is, or ought to be, for neglecting or abusing their execution: the public welfare being entrusted to
the

the consultation of wiser heads and more respectable personages than private subjects or petty magistrates.

The supposed justification of the magistrate in these cases, evidently arises from the notion that he is required and empowered by the statute, to disperse the rioters by force and arms ; to which end he may annoy them by every means in his power ; even to the taking away their lives if they obstinately persist in remaining on the spot. But this notion is a mistaken one, and, as I have shewn, by no means founded on the Riot Act ; the magistrate being only empowered by force to seize and apprehend the rioters, in order that they may be dealt with according to law. It is in consequence of his endeavours so to seize and apprehend them, and the resistance that may be made to such endeavours, that his indemnification is provided for by the statute, in regard to such sinister accidents as may *happen* to those who oppose him in the execution of his office.

But

But it is in regard to such accidents only. It must be a casualty resulting from the nature of the situation and circumstances ; not a pre-meditated and wilful act of violence, that does not tend to the discharge of the magistrate's duty, and therefore may be avoided.

The *assistants* of the magistrates, whether civil or military, are not legally empowered to become *assailants*, and wilfully to kill, maim or wound all the rioters they cannot take, or do not chuse the trouble of taking, prisoners ; although they may put the lives of such rioters to the hazard, in the discharge of their duty and in defence of their own. This duty, however, it is to be remembered, is confined to the seizing and apprehending the rioters ; and such self-defence to the committing as little violence on the persons of the offenders as their seizure and apprehension render necessary. The law does not appear in this case to justify the killing or wounding a rioter even though he should find means to escape after actual seizure ;
although

although there can be no doubt that, if he make an actual assault on the magistrate or his assistants, they may lawfully kill him in their own defence, and to prevent his escape.

All other means, however, ought to be tried first ; keeping constantly in view the end and purpose of the magistrate's duty, viz. the *apprehending* the criminal, in order for him *to be dealt with according to law*. It is not his province to punish the culprit unconvicted, but to bring him to conviction and condign punishment.

To these reflections let me add ; that, being an utter stranger to the parties concerned in the transactions reflected on, I have given my opinion without the least partiality or prejudice : having taken up the pen merely out of a natural love of justice, and a solicitude to see the future preservation of the public peace effected by means more conformable to *Law*, and less shocking to HUMANITY.